



Serial No. 09/714,702
Attorney Docket No. 65678-0037

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: BLY, et al.

Serial No.: 09/714,702

Group Art Unit: 3621

Filed: 11/16/2000

Examiner: HEWITT II, Calvin L.

For: APPARATUS AND METHOD FOR TRACKING AND MANAGING
PHYSICAL ASSETS

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(Wendy Balaban)

REPLY BRIEF

Dear Sir:

This is a Reply Brief submitted pursuant to 37 C.F.R. § 1.193 in response to the Examiner's Answer mailed September 8, 2004 ("Examiner's Answer").

Claims 11-25 are pending in this application and are the subject of this Appeal. Claims 1, 16, and 18 are independent claims. No claims have been allowed.

In the Examiner's Final Rejection mailed February 6, 2004 (hereinafter the "Final Office Action"): (1) claims 1-4, 8-11, 16-18, and 21-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,875,430 ("Koether"); (2) claims 5-7 and 25 were rejected under 35 U.S.C. § 103(a) as being obvious over Koether; and (3) claims 12-15, 19, and 20 were rejected under 35 U.S.C. § 103(a) as being obvious over Koether in view of U.S. Patent No.

5,900,801 (“Heagle”) and U.S. Patent No. 6,417,760 (“Mabuchi”). In the Brief on Appeal filed July 1, 2004 (“Appeal Brief”), Appellants provided arguments against each of the foregoing rejections.

Among other arguments in the Examiner’s Answer, the Examiner stated the following positions, addressed in turn in this Reply Brief:

- (1) Koether’s statement that “[s]cheduled preventative maintenances are stored in databases” teaches “generating a preventative maintenance determination.”
- (2) Corollary to (1) above, Koether suggests that “said historical characteristic and said remote historical characteristic are not dates on which maintenance were performed” because it would have been obvious to one of ordinary skill in the art to “choose whatever data . . . need[ed] in order to properly analyze a given problem.”
- (3) Koether discloses a handheld device in direct contact with an analysis controller.
- (4) Koether discloses a second computer system disposed between an analysis controller and a hand held device.
- (5) Koether discloses a second computer system that receives acquired data, selectively modifies aspects of acquired data, and forwards acquired data including said modified aspects to a hand held device.
- (6) Koether discloses best practice level and past historical data to provide for comparison with collected data.
- (7) Koether discloses user data representing a user accessing an asset.
- (8) Koether discloses user data that “includes at least a subset of user identification, and access authorization”.
- (9) Koether discloses “a hand held device including a form, said form providing at least a subset of said data values for the entry of foundational data, said foundational data being transmitted to said analysis controller and stored in said database.”
- (10) Koether discloses user data representing a user accessing an asset.

(11) Mabuchi teaches “preventing untrained or ‘uncertified’ (i.e. workers who have engaged in unsanitary activities) workers from accessing a kitchen (i.e., class of assets).”

(12) Koether, Mabuchi, and Heagle teach an “authorization subsystem including an asset access mechanism to receive said user identification from a data transmission point associated with the asset”.

(13) Mabuchi teaches an asset controller for user identification.

(14) Koether, Mabuchi, and Heagle do affirmatively suggest their combination and do not teach away from such combination.

ARGUMENT

As explained below, the Examiner is not correctly stating or applying the legal requirements for a rejection pursuant to 35 U.S.C. 103(a).

A. KOETHER FAILS TO ANTICIPATE CLAIMS 1-4, 8-11, 16-18, AND 21-24.

1. Claims 1, 16, and 18 (all Claim Groups): Koether does not disclose generating “a preventative maintenance determination”.

Independent claims 1, 16, and 18 were rejected under 35 U.S.C. 102(e) as being anticipated by Koether. Claims 1, 16, and 18 each recite generating “a preventative maintenance determination” or an “analysis including a preventative maintenance schedule”. The Examiner’s Answer (page 10) states that “Koether teaches three types of preventative maintenance,” including “[1] scheduled preventative maintenance and [2] preventative maintenance requested by an appliance,” as well as “[3] preventative maintenance determined by diagnostic information transmitted to a control center.” However, none of Koether’s alleged teachings even remotely suggest – and in fact Koether teaches away from – *generating* a preventative maintenance determination or an analysis including a preventative maintenance schedule as is required by Appellants’ independent claims.

The Examiner’s Answer does not address Appellants’ argument (Appeal Brief, page 8) that Koether actually teaches against generating a preventative maintenance determination in two ways: (1) Koether teaches an analysis of diagnostic information that would be unnecessary if a preventative maintenance determination were generated; and (2) Koether teaches scheduled maintenances that would be redundant if preventative maintenance determinations were used.

Koether teaches at most storing maintenance history to provide human beings with the ability to access the information at a later time. (*E.g.*, Koether, col. 11, lines 36-46.) The Examiner has not explained in any Office Action or the Examiner's answer how this teaching reads on Appellants' claims, which recite that acquired data and historical data are used in a dynamic fashion to schedule future maintenance. Nor has the Examiner addressed Appellants' argument that because Koether teaches analyzing the diagnostic information to determine "whether to disable the appliance . . . or . . . to modify the cooking profiles stored in the appliance," (Koether, col. 9, lines 45-48), Koether teaches taking steps that would be unnecessary if a preventative maintenance determination had been generated.

Moreover, the Examiner's Answer does not address Appellants' argument (Appeal Brief, page 8) that Koether's scheduled maintenances would have left one of ordinary skill with no reason to generate a preventative maintenance determination. Instead, the Examiner's Answer (*e.g.*, page 3) simply repeats the assertion of the Final Office Action that Koether teaches "generating a preventative maintenance determination" by disclosing that

Normally, monitoring and tracking control passes to the control center after a malfunction or fault has been reported by the microprocessor based controller. However, the control center may effect preventive maintenance even when there is no malfunction reported. *Scheduled preventive maintenances* are stored in database 190. (Koether, col. 8, lines 30-39; emphasis added.)

Scheduled preventative maintenances are by definition different than generated preventative maintenance determinations. Moreover, the Examiner has not addressed the fact that a scheduled maintenance would leave no need to *generate* a preventative maintenance determination, and thus would not have suggested generating a preventative maintenance determination to one of ordinary skill in the art.

The Examiner's Answer (page 11) further states that "Appellants' disclosure is absent the term 'maintenance history'" and that "[t]herefore, a database that retains data such as the reason why maintenance personnel [were] sent out or the source of the problem (*i.e.*, type of malfunction) maintains 'maintenance history.'" The Examiner apparently intended to argue that Koether anticipates the limitation in claim 1 of "generating a preventative maintenance determination from said acquired data and at least one historical characteristic relating to said asset" as well as the similar limitation in claims 16 and 18 of "said analysis including a

determination of a preventative maintenance schedule from a collected maintenance history characteristic related to the asset.” Assuming *arguendo* that Koether does teach storing maintenance history data, nowhere does Koether teach or suggest generating a preventative maintenance determination based on such data. In fact, as explained above and in Appellants’ Appeal Brief (pages 7-9), Koether actually teaches against the recited generation of a preventative maintenance determination.

Accordingly, Koether not only fails to disclose generating a preventative maintenance determination, but, for at least two independent reasons, is incapable of even suggesting such a limitation. Therefore, for the foregoing reasons, claims 1, 16, 18, and all of their dependent claims (claims 2-15, 17, 19-25) are in condition for allowance.

2. Claim 2 (Claim Group B): Koether does not disclose a hand held device that is in direct contact with an analysis controller.

Koether does not teach or suggest that “said hand held device is in direct contact with said analysis controller” as required by claim 2. The Examiner’s Answer (page 11) states that Appellants’ Specification lacks “a definition for ‘direct contact’”, and further asserts, without any explanation or reference to the prior art, that “Appellants’ rationale for why Koether is insufficient prior art is faulty and shows a *total* lack of understanding of how wireless, or even telecommunications works. . . . Does the Appellant think calls are made using two cans and a string?” (Emphasis in original.) In short, the Examiner has taken the untenable position that *any* contact between a hand held device and another device is “direct contact.”

The Examiner inexplicably, and without explanation, cites to Figure 8 of Appellants’ Specification (Examiner’s Answer, page 11); Appellants’ Figure 8 clearly shows a handheld device 168 in direct contact with an analysis controller database 78. Figure 8 of Koether, in contrast, shows that the portable hand held terminal 810 communicates with a control center 170 *indirectly* through a kitchen base station 150 and a data network 180. Further, the kitchen base stations of Koether are located at the restaurant where Koether’s appliance controllers are located. (Koether, Figure 8.) Thus, Koether’s hand held terminal is not even close to being in direct contact with Koether’s control center, which is located remotely from the restaurant housing an appliance controller. In this context, the Examiner’s statement that “service personnel contacts [*sic*] the control center computer [citing Koether, Figure 8] in order to receive a subset of acquired data” (Examiner’s Answer, page 12) is simply irrelevant inasmuch as

whether or not a service person contacts a control center has absolutely no bearing on whether or not a handheld device is in direct contact with an analysis controller. Thus, Koether clearly does not anticipate a hand held device “in direct contact with said analysis controller” as required by claim 2.

Therefore, for at least the foregoing reasons, claim 2 is in condition for allowance.

3. Claim 3 (Claim Group C): Koether does not disclose a second computer system disposed between said analysis controller and said hand held device.

After the Appeal Brief (page 10) noted that the Final Office Action did not point to any portion of Koether that allegedly anticipates a second computer system “disposed between said analysis controller and said hand held device” as recited in claim 3, the Examiner responded by re-asserting that Koether’s control center “comprises multiple ‘computer systems.’” (Examiner’s Answer, page 12; *see* Final Office Action, page 5.) However, the Examiner wholly failed to address the contradictory and mutually exclusive positions taken in the Final Office Action regarding Koether’s control center. Koether’s control center cannot anticipate both the claimed invention’s analysis controller (as discussed above regarding claim 2) as well as the second computer system “disposed between said analysis controller and said hand held controller” (required by claim 3). The analysis controller and the second computer system are distinct elements of the claimed invention. Thus, not only does Koether fail to read on either claims 2 or 3, but it is logically impossible that Koether reads on both claims 2 and 3.

Therefore, Koether fails to anticipate each element of claim 3, which for at least this reason is in condition for allowance, as is claim 4, depending from claim 3.

4. Claim 4 (Claim Group D): Koether does not disclose a second computer system that receives said acquired data, selectively modifies aspects of said acquired data, and forwards said acquired data including said modified aspects to said hand held device.

The Examiner responded to Appellants’ argument (Appeal Brief, pages 10-11) that there is no evidence in Koether that either the kitchen base station or the data network “selectively modifies aspects of said acquired data, and forwards said acquired data including said modified aspects, to said hand held device” (claim 4, emphasis added), by stating that Koether teaches “a sum of prior repairs or malfunctions”. (Examiner’s Answer, page 12.) Koether does teach that “data transmitted from the kitchen appliance may include identified failures or malfunctions in

the cooking appliance.” (Koether, col. 8, lines 26-28.) However, Koether makes absolutely no teaching or suggestion that this data is modified in any way, or that modified aspects of any data are transmitted to a hand held device.

The Examiner further states that Appellants’ Specification “does not explicitly define ‘selectively modifying aspects of acquired data’” (Examiner’s Answer, page 12). It is unclear exactly what conclusion the Examiner wishes to suggest from this assertion, which moreover is wrong. The very paragraph of Appellants’ Specification cited by the Examiner explains that “even at the beginning of the utilization of the system 300, the initially collected data [by the hand held device] can be analyzed,” and that “some analysis of the data may be performed directly on hand held device 168.” (Specification, page 36, lines 6-7, 12.) As the Examiner notes (Examiner’s Answer, page 13), Koether teaches at most that service personnel can use a second computer system to “obtain stored acquired data” and recommendations such as repair instructions. Koether contains absolutely no teaching or suggestion that its hand held terminal modifies data in any way.

For at least the foregoing independent reasons, claim 4 is in condition for allowance.

5. Claims 9 and 17 (Claim Groups E and I): Koether fails to disclose either best practice level or past historical data to provide for comparison with collected data.

Koether does not disclose a database that includes best practice level or past historical data “to provide a base point for comparison with said collected data” as recited in claims 9 and 17. The Examiner’s Answer (page 13), with no support or explanation, asserts that repair instructions comprise “comparison data of a best practice level.” As is clear from the discussion of “best practices” in Appellants’ Specification, the recited best practices are not the same as simple repair instructions but rather relate to rules for the treatment of an asset over its useful life. (Specification, page 33, lines 17-20.)

Further, the Examiner responded to Appellants’ argument that Koether does not disclose a database that contains data “to provide a base point for comparison with said collected data” (claims 9 and 17, emphasis added) by asserting (Examiner’s Answer, page 13) that Koether’s teaching of storing diagnostic information for later determination of the “the frequency and type of failures for specific types of kitchen appliances” (Koether, col. 9, lines 56-60) reads on claims 9 and 17. However, nowhere does Koether teach or suggest comparing such diagnostic data with

any comparison data. The mere collection and analysis of diagnostic data has no bearing on the database of comparison data required by claims 9 and 17. Further, simply because Koether discloses the possibility of applying “fuzzy logic” in diagnostic software does not mean that Koether makes any teaching or suggestion “to compare collected data and historical data.” (Examiner’s Answer, page 13.)

Therefore, for at least the foregoing reasons, claims 9 and 17 are in condition for allowance.

6. Claim 10 (Claim Group F): Koether fails to disclose user data representing a user accessing an asset.

Koether fails to disclose “user data representing a user accessing the asset” as recited in claim 10. The Examiner’s Answer, with absolutely no explanation, states that Koether’s disclosure that “retail food service chains such as McDonald’s® or Burger King®, may readily update the cooking profiles of their food products” (Koether, col. 11, lines 57-60) teaches “collecting data that represents a user.” However, the cited portion of Koether clearly has nothing to do with collecting data that represents a user. Indeed, Koether teaches updating information in a kitchen appliance “on a global basis” (Koether, col. 11, lines 60-61) and more importantly does not teach or suggest collecting any data from kitchen appliances that is in any way be associated with a particular user, much less collecting data “representing a user accessing an asset” as is required by claim 10.

Therefore, for at least the foregoing reasons, claim 10 is in condition for allowance.

7. Claim 11 (Claim Group G): Koether fails to disclose user data that “includes at least a subset of user identification, and access authorization”.

There is no mention in Koether of user data that “includes at least a subset of user identification, and access authorization” as recited in claim 11. The Examiner’s Answer (page 14) asserts that Koether’s disclosure of a control center storing billing information such as customer name, ID, account number, etc. (Koether, col. 10, lines 36-44), reads on the requirement of claim 11 that “user data includes at least a subset of user identification, and access authorization.” However, as discussed in the Appeal Brief (and not addressed by the Examiner’s Answer), Koether’s disclosure of using an identification number is limited to billing functionality and does not relate at all to “access authorization” (claim 11) for “a user accessing the asset” (claim 10). (See Appeal Brief, pages 12-13.) Koether’s customer name and other data

related to customers clearly relates to institutions such as restaurants and hotels, not to individual users. (See Koether, col. 1, lines 26-28.)

Therefore, for at least the foregoing reasons, claim 11 is in condition for allowance.

- 8. Claims 5-6, 16, and 17 (Claim Groups H, I, and J): Koether fails to disclose “a hand held device including a form, said form providing at least a subset of said data values for the entry of foundational data, said foundational data being transmitted to said analysis controller and stored in said database.”**

The Final Office Action stated that claims 5 and 6 were rejected over Koether under Section 103(a), but the Examiner’s Answer (page 14) states that “the Examiner erred and should have rejected claim 5 under 102(e).” Pursuant to 37 C.F.R. § 41.39(b)(2), Appellants maintain the present appeal and address this new ground of rejection herein to the extent it was not addressed in the Appeal Brief.

As discussed in the Appeal Brief (page 13), the Final Office Action fails to point to any part of Koether that anticipates “a hand held device including a form, said form providing at least a subset of said data values for the entry of foundational data, said foundational data being transmitted to said analysis controller and stored in said database” as recited in claim 16, or “forms providing data values for the entry of foundational data associated with said data values, said data values and said foundational data being transmitted to said analysis controller” as required by claim 5. Appellants’ Specification clearly explains that “foundational data” is data about various attributes of an asset, (Specification, page 34, line 13 – page 35, line 19), not billing or invoice data as the Examiner’s Answer (page 15) attempts to suggest.

Further, the Examiner’s Answer wholly fails to address Appellants’ argument that Koether makes no disclosure of a form providing at least a subset of said data values for the entry of foundational data” or of “foundational data being transmitted to said analysis controller and stored in said database.” (Appeal Brief, page 13.) The Examiner similarly ignores Appellants’ argument that Koether’s billing records are unrelated to a form providing data values for the entry of foundational data” as required by claims 5 and 16.

Therefore, for at least the foregoing reasons, claims 5 and 16 and their dependent claims 6 and 17 are not anticipated by Koether and are in condition for allowance.

C. CLAIMS 12-15, 19, AND 20 ARE NOT OBVIOUS OVER KOETHER IN VIEW OF HEAGLE AND MABUCHI.

Claims 12-15, 19, and 20 stand rejected under 35 U.S.C. 103(a) as being obvious over Koether in view of Heagle and Mabuchi. However, as explained below, the cited references as combined would not have rendered each and every element of the claimed invention obvious to one skilled in the art. Moreover, the cited references contain no affirmative suggestion to combine and actually teach away from their combination. Therefore, claims 12-15, 19, and 20 are in condition for allowance.

1. Claims 12 and 20 (Claim Group L): The cited references do not teach “an analysis of user training or user certification with respect to a class of assets.”

Claim 12 recites that “said access authorization includes an analysis of user training or user certification with respect to a class of assets including the asset.” Claim 20 recites that “said additional user data includes at least one of a user training and a user certification with respect to a class of assets including the asset.” The Final Office Action (page 8) asserted that Heagle teaches “user identification and access authorization that includes an analysis of user training.” Instead of responding to Appellants’ argument (Appeal Brief, page 16) that Heagle does not teach “user training or user certification with respect to a class of assets,” the Examiner newly asserts that Mabuchi teaches “preventing untrained or ‘uncertified’ (i.e. workers who have engaged in unsanitary activities) workers from accessing a kitchen (i.e., class of assets).” (Examiner’s Answer, page 16.)

As an initial matter, the Examiner has not shown any motivation for one of ordinary skill in the art to have modified Koether’s system for maintaining kitchen appliances (*see* Koether, Abstract) with Mabuchi’s system for controlling the access of workers to restricted areas. (*See* Mabuchi, col. 22, lines 41-45.) Further, the Examiner has not shown that one of ordinary skill in the art would have regarded the allegedly modified system of Koether as equivalent of or analogous to the embodiment recited in claims 12 and 20.

Moreover, the Examiner has made a misdirected argument that Mabuchi’s alleged disclosure of preventing unauthorized workers from accessing a kitchen anticipates Appellants’ recitation in claims 12 and 20 of “user training or user certification with respect to a class of assets including the asset.” Mabuchi is clearly directed toward managing the access of various individuals to various locations within a business, such as a kitchen. (*See, e.g.,* Mabuchi, col. 3,

lines 39-67.) The restricted work areas disclosed in Mabuchi are clearly different than the recited “class of assets” in that the work areas disclosed by Mabuchi are locations rather than physical assets such as the assets to which claims 12 and 20 are clearly directed; the portions of Mabuchi cited by the Examiner clearly reflect this distinction. (*See, e.g.*, Mabuchi, col. 22, lines 34-52.)

Therefore, for at least the foregoing reasons in addition to the reasons discussed in the Appeal Brief, claim 12, and claims 13-14 dependent on claim 12, are in condition for allowance, as is claim 20.

2. Claims 13 and 15 (Claim Groups M and N): The cited references do not teach an “authorization subsystem including an asset access mechanism to receive said user identification from a data transmission point associated with the asset”.

Claim 13 recites “an authorization subsystem, said authorization subsystem including an asset access mechanism to receive a user identification from a data transmission point associated with the asset and a comparison of said user identification from said data transmission point with said user identification from a remote database to confirm the identify of said user.” Similarly, claim 15 recites that “said user identification is compared to access authorization to confirm proper authentication, said asset access mechanism permitting operation of the asset upon proper authentication.” The Final Office Action failed to make any citation to an authorization subsystem that includes an asset access mechanism.

The Examiner’s Answer (page 16) appears to address Appellants’ argument (Appeal Brief, pages 16-17) that Mabuchi’s teachings of user identification relate to Mabuchi’s entry/exit management apparatus rather than Mabuchi’s maintenance/inspection support apparatus by newly arguing that Mabuchi’s teaching of authorizing individuals to enter work areas must be combined with Koether’s alleged teaching of “handling kitchen appliances.” Notably, the Examiner’s Answer makes no *prima facie* case of obviousness for this newly proposed combination of Mabuchi and Koether, but rather states only that combining Mabuchi and Koether would be “obvious . . . in light of the prior art.” Moreover, there is absolutely no teaching or suggestion in either Mabuchi or Koether that Mabuchi’s systems for authorizing individuals to enter work areas could or should be combined with Koether’s system for maintaining kitchen appliances.

Further, the Examiner's Answer fails to address Appellants' argument (Appeal Brief, page 17) that Mabuchi fails to teach an "asset mechanism permitting operation of the asset upon proper authentication" as required by claim 15.

Therefore, for at least the foregoing reasons, claims 13 and 15 are in condition for allowance. Claim 14 depends from claim 13 and is therefore in condition for allowance for at least this reason.

3. Claims 13 and 19 (Claim Groups M and O): The cited references fail to teach a comparison of user identification.

Appellants previously argued (Appeal Brief, page 17) that with regards to claim 13, neither Koether, Heagle, nor Mabuchi teach a "comparison of said user identification from said data transmission point with said user identification from a remote database to confirm the identity of said user" (claim 13). The Examiner's Answer (*see* page 17) wholly fails to address claim 13.

Further, with regards to claim 19, Appellants argued (Appeal Brief, page 17) that neither Koether, Heagle, nor Mabuchi teach a "user identification being compared with a corresponding user identification stored in said asset controller, and providing selective access authorization based on additional user data stored in said asset controller for said user identification." The Examiner's Answer (page 17) newly asserts that Mabuchi teaches an asset controller, apparently intending to imply that Mabuchi's asset controller is used to store data for user identification. However, the cited elements from Mabuchi are clearly labeled "WORKER INFORMATION READ SECTION" and "WORKER INFORMATION FILE" (Mabuchi, Fig. 19, numbers 34 and 35) and thus, on its face, Mabuchi clearly does not teach or suggest the asset controller required by claim 19. Moreover, Mabuchi makes clear that these elements refer not to a controller, but rather simply to a file and a mechanism for reading data relating to workers into the file. (Mabuchi, col. 21, lines 10-21.)

Therefore, for at least the foregoing reasons, claims 13 and 19 are in condition for allowance.

4. Claims 12-15, 19, and 20 (Claim Groups L, M, N and O): The cited references do not affirmatively suggest their combination and teach away from such combination.

Appellants previously argued (Appeal Brief, page 18) that the Examiner had failed to state a *prima facie* case of obviousness by failing to provide any motivation for the combination

of Koether, Heagle, and Mabuchi, and further that there is simply no affirmative suggestion or motivation in the prior art to combine Mabuchi with Heagle or Koether. The Examiner's only response to this argument was to state that "[t]he Examiner respectfully disagrees. The common thread through each reference is safety. Further, each looks to provide a safe working environment through the maintenance of high standards of worker and appliance performance." (Examiner's Answer, page 18.)

Appellants respectfully submit that this statement falls far short of meeting the Examiner's burden of stating a *prima facie* case of obviousness. Accepting *arguendo* the Examiner's assertion that each of the three cited references "looks to provide a safe working environment," there is absolutely no reason why the mere fact that each reference allegedly discusses safety would render the references capable of modification. Indeed, the Examiner simply has not shown any teaching or suggestion in any of the references that would have motivated one of ordinary skill in the art to combine them.

Therefore, at least because Koether, Heagle, and Mabuchi are incapable of combination, claims 12-15, 19, and 20 are in condition for allowance.

CONCLUSION

Appellants respectfully submit that all of the appealed claims in this application are patentable for at least the reasons stated above and request that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

This brief is submitted in triplicate. It is believed that no fees are due with respect to this paper. However, if any fees are found to be required in connection with the filing of this paper, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC.

Respectfully submitted,

Date: November 2, 2004

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